IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.727 OF 2004
IN
NOTICE OF MOTION NO.2273 OF 2004
IN
S.C. SUIT NO.2301 OF 2004

Jet Speed Developers Pvt. Ltd. & others)..Appellants

Versus

Dr.Omprakash B.Soniminde and others)..Respondents

Mr.Jai Chinai with Mr.Sanjay Jain i/b.Ranjit & Co. for the Appellants.

Mr.V.A.Thorat with Mr.N.N.Bhadrashete for Respondent Nos.1 and 2.

Mr.Tejas Deshpande for Respondent No.4.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 22ND NOVEMBER 2004

P.C.:

. The Suit has been filed for an injunction restraining Defendant Nos.1 to 3 - Appellants herein from constructing the 8th floor premises on the building known as "Shamrock" situated at Le-Chateau Co-operative Housing Society Ltd., S.V.Road, Santacruz (W), Mumbai 400 054. The present Appeal From Order has been filed by the Appellants after Notice of Motion No.2273 of 2004 filed by the Plaintiffs - Respondent Nos.1 and 2 herein was allowed and injunction as prayed for was granted.

2. Mr.Chinai for the Appellants submits that the construction of the 8th floor is almost complete and only 20% of it remains to be finished. He submits that no prejudice would be caused to the parties if the construction which is commenced in accordance with the sanctioned plans is permitted to be completed. According to Mr.Chinai the construction has been undertaken pursuant to the resolution passed by the Managing Committee which was later confirmed at the General Body meeting of the Society on 6th June 2001. He, therefore, submits that the injunction ought not to have been granted since Appellant No.1 has constructed the 8th floor in accordance with the resolution passed by the Society.

3. Mr.Thorat, learned Counsel appearing for Respondent Nos.1 and 2, submits that the entire Society has been hijacked by the Malkani family, some of whom are Directors of Appellant No.1. He submits that the resolution dated 21st August 2000 which is sought to be relied is fabricated and was never circulated to the members of the Society. He further submits that the entire construction has been commenced on the basis of a resolution passed by eleven members of the Society, seven of whom belonged to the Malkani family. The learned Counsel urges that the interim relief granted by the

trial Court ought not to be disturbed.

4. It appears that an Administrator has been appointed to manage the affairs of the Co-operative Society in February 2004. The Administrator is represented in this Court and submits that the order of the trial Court should not be disturbed.

5. Having heard the learned Counsel at length, I am of the view that since the construction is almost nearing completion, no purpose would be served by leaving it unfinished. There is no dispute that the construction has been undertaken pursuant to sanctioned plans from the Mumbai Municipal Corporation. Furthermore, no prejudice would be caused to either party if the construction is allowed to be completed. However, such permission for construction would not create equities in favour of any of the parties to the Suit.

6. Accordingly, the Appellants are permitted to complete the construction in accordance with the sanctioned plans. However, it is made clear that this permission will not create equities in favour of any of the parties to the Suit. Once construction is completed, the premises will not be occupied by any of the parties. The Appellants will not occupy the premises themselves nor will they create any third party rights in favour of

any other person.

7. The hearing of the Suit is expedited. The trial Court is requested to decide the Suit as expeditiously as possible and preferably by 31st December 2005.

8. Appeal From Order disposed of accordingly.

9. In view of the Appeal From Order being disposed of, nothing survives in Civil Application No.981 of 2004 and the same is disposed of accordingly.